IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8014 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGILAL NAVLAJI CHAVALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8014 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

M A SHAIKH for Respondent No. 4

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/11/2004

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner

has challenged the order of detention dated 28-6-2004 passed by the District Magistrate, Navsari in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel appearing for the respective parties. It is submitted by the learned counsel for the petitioner that the petitioner has been booked under PBM by the order dated 28-6-2004 and he was actually detained on 2-7-2004. He has concentrated his arguments mainly on the point of delay in deciding the representation. It is submitted that the petitioner has sent a written representation through advocate to the detaining authority on 3-7-2004 and it was received on 5-7-2004 which was forwarded to the Central Government on 8-7-2004. Said representation was received by the Central Government on 9-7-2004 and decided on 15-7-2004 and hence, there is a delay in deciding the representation. He has relied upon the case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) wherein it is held as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

He has also relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with

continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

3. In the present case, it appears from the arguments of learned counsel for the petitioner that the representation dated 3-7-2004 which was received by the Central Government on 8-7-2004 was rejected on 15-7-2004. Hence, there is a delay in deciding the representation. However, no satisfactory explanation has been putforward by the authorities for the delay caused in deciding the representation though filed the affidavits. Hence, in view of the aforesaid judgments relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

4. The petition is allowed. The impugned order of detention dated 28-6-2004 passed against the detenu MANGILAL NAVLAJI CHAVALA is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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